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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jeremy Thacker,

Plaintiff,

v.

GPS Insight, LLC; Robert J. Donat,
Individually and as Trustee of The
Robert Donat Living Trust Dated April
19, 2017,

Defendants.

No. 2:18-cv-00063-PHX-DGC

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION *IN LIMINE*
NO. 2 – ARGUMENT RE:
“FAILURE TO DISPUTE”**

This is yet another previously addressed issue. (Doc. 151 (Court found issue of fact for jury to resolve regarding Plaintiff's credit card use, and noted "Plaintiff admits to making the personal charges, and did not object to their deduction")). The difference is now Plaintiff seems to suggest he objected to all deductions at issue, whereas the last time this was raised he conceded he had taken issue with only *some* charges, so what to make of his use of a GPSI card for personal expenses was a matter for the jury. *Compare* Doc. 179 (motion *in limine*) with Doc. 127 at 19 ("Thacker also knew that some personal expenses were going to be deducted" but "disputes some of the charges."). As the Court previously ruled, there is a factual dispute concerning the evidence that the jury should resolve. (Doc. 151 at 21-23).

The evidence at issue is relevant to both Plaintiff's tortious interference and defamation claims. To summarize the prior briefing on this issue, (Docs. 112 at 8, 127 at

1 19, 133 at 8), as background, in 2014, Plaintiff was warned if he used a GPSI card for
2 personal expenses again, he would be terminated. Shortly after his termination in 2017,
3 GPSI found out Plaintiff had done just that. Charges included a weekend at a local spa,
4 plane tickets for a female acquaintance, \$300 on Amazon, electronics for Thacker's
5 house, a barware set, bedsheets, and \$400 for a flight that Thacker bought for a co-worker
6 as a birthday present. (Doc. 112 at Exs. 25-26; Tr. Ex. 262-264). Donat's argument
7 concerning tortious interference is that Plaintiff will be unable to show his employment
8 with GPSI would continue absent the alleged interference because he would have been
9 fired over these charges. (Doc. 171-1 at 6-7). As to defamation, Plaintiff claims Donat
10 defamed him by supposedly stating that Plaintiff "stole," "bought toys illegally with the
11 company credit card," and "was the subject of an ongoing prosecution for felony theft . .
12 . ." (Doc. 171-1 at 11). Truth is a defense, and the transactions at issue are the basis of
13 that defense. (*Id.*)

14 Plaintiff contends it "is so blatantly incorrect" that he did not dispute deductions
15 from his final pay for these charges "that to allow this suggestion to the jury in opening
16 statement or at any other time would be unfairly prejudicial." (Doc. 179 at 1). He
17 contends that this is so because he supposedly *did* dispute the charges.¹ (*Id.* citing Tr. Ex.
18 235). In exhibit 235, Plaintiff disputes the deductions for about \$50 of audio books and
19 a particular flight as business expenses; but he does not dispute the remainder of the
20 charges, like the barware set, spa weekend, birthday present flight, or sheets. This
21 explains Plaintiff's prior concession that he "knew that some personal expenses were
22 going to be deducted" but "disputes some of the charges." (Doc. 127 at 19)

23 The fact that Plaintiff did not dispute some of the charges tends to make it more
24 likely that he knew they were improperly charged, and so is relevant to Donat's defense
25 that GPSI would have terminated Plaintiff regardless of any alleged interference. Jason
26

27 ¹ Plaintiff additionally references his arguments concerning the timeliness of the
28 disclosure of evidence, which Defendants fully addressed in response to Plaintiff's
Motion *in Limine* No. 1.

Walker will testify that, given the prior warning to Plaintiff about misusing the company credit card, he would have done just that over these charges. Moreover, Plaintiff's failure to dispute these charges tends to make it more likely that Donat's alleged statements were true – Plaintiff *did* steal, Plaintiff *did* buy toys illegally with the company credit card,² and the Scottsdale Police Department did refer their investigation of Plaintiff to the Maricopa County Attorneys' Office. (See Plaintiff's Ex. 104 (police report); Defendants' Ex. 215 (police report and supplements)). Indeed, while Plaintiff filed a kitchen-sink complaint, he did not sue for alleged wrongfully withheld pay as a result of the deductions.

The premise of the motion *in limine* is therefore wrong, whether Plaintiff is contending that he objected *in toto* to the deductions (he didn't) or whether he claims he "disputed their accuracy on summary judgment" (Doc. 179 at 1:28; *compare* Doc. 127 at 19 (Plaintiff's summary judgment brief: "Now that an accounting has been provided, he disputes *some* of the charges." (emphasis added))). Since the premise of Plaintiff's motion is incorrect, it should be denied. If he would like to dispute certain of the charges, he is free to present his version of the facts to the jury and let them decide. His motion presents no reason why *all* evidence on point should be excluded.

RESPECTFULLY SUBMITTED this 5th day of December, 2019.

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By: /s/ Stefan M. Palys

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² It was literally toys. (Doc. 112-3 (6/24/16 charge for children's toys); Tr. Ex. 263)

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2019, I caused the foregoing document to be filed electronically with the Clerk of Court through ECF; and that ECF will send an e-notice of the electronic filing to:

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I hereby certify that on December 5, 2019, a courtesy copy will be e-mailed to:

Judge David G. Campbell
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/s/ Linda Holder